



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
John A. Schillinger *et al.*

Serial No.: 11/482,859

Filed: July 7, 2006

For: PLANTS HAVING RESISTANCE TO
MULTIPLE HERBICIDES AND ITS USE

Group Art Unit: 1661

Examiner: David Kruse

Atty. Dkt. No.: ASGR:002USD2
11000023-0007

DECLARATION OF ALAN K. WALKER UNDER 37 C.F.R. § 1.132

I, Alan K. Walker, hereby declare as follows:

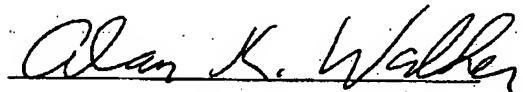
1. I am a U.S. citizen and currently reside at 3270 NW 87th Lane, Ankeny, Iowa.
2. I have been employed by Asgrow Seed Company, Inc., and subsequently by Monsanto Company, the parent company of wholly owned subsidiary Asgrow Seed Company, Inc., since 1982, currently with the title of ASI Soybean Breeding Lead.
3. I hold a Ph.D. in Plant Breeding and Cytogenetics from Iowa State University and a B.S. in Agronomy from University of Minnesota. I have been conducting research in the area of plant breeding and genetics since 1977. My duties have included the development of transgenic crop varieties.
4. I am an inventor of the above-captioned patent application, the ownership of which is assigned to Asgrow Seed Company, and am familiar with the contents of the patent application.

5. I understand that the Patent and Trademark Office Examiner in charge of assessing the patentability of the referenced patent application has rejected the patent application as being anticipated by U.S. Patent 5,710,368 ("Rhodes"), to William K. Rhodes, filed May 10, 1996, also assigned to Asgrow Seed Company. In particular, I understand that the Examiner rejected the claims because Rhodes discloses soybean cultivar 924181399 that displays resistance to glyphosate and ALS inhibitor herbicides.
6. I am submitting this Declaration to affirm that William K. Rhodes, the inventor of U.S. Patent 5,710,368 and a co-worker at Asgrow Seed Company, derived the concept of combining sulfonylurea and glyphosate tolerance in a soybean plant from the inventors of the above captioned patent application. The subject matter of the Rhodes patent represents a particular species, *i.e.* a particular cultivar of soybean, displaying the presently claimed herbicide resistances to glyphosate and ALS inhibitor herbicides. Thus, the disclosure relied upon by the patent examiner relating to herbicide resistances to glyphosate and ALS inhibitor herbicides is a description of the current inventors' own work.
7. The inventions claimed in the present application and as disclosed in U.S. Patent 5,710,368 were commonly owned or were subject to an obligation of assignment of ownership to the same party, Asgrow Seed Company, at the time the invention of Rhodes was made. A copy of the assignment recordation information applying to the present application and U.S. Patent 5,710,368 is attached as **Exhibit A**.
8. I am also familiar with a second Asgrow Seed Company patent, U.S. Patent No. 5,659,120, that discloses soybean variety 928933959, which is described as exhibiting

resistance to sulfonylurea and glyphosate herbicides. This patent issued from an application filed on May 20, 1996 naming Craig K. Moots as the inventor. I am also submitting this Declaration to affirm that Craig K. Moots, a co-worker at Asgrow Seed Company, derived the concept of combining sulfonylurea and glyphosate tolerance in soybean variety 928933959 from the inventors of the above captioned patent application. The subject matter of U.S. Patent No. 5,659,120 represents a particular species, *i.e.* a particular cultivar of soybean, displaying the presently claimed herbicide resistances to glyphosate and ALS inhibitor herbicides. This aspect of the patent is a description of the current inventors' own work.

9. The inventions claimed in the present application and as disclosed in U.S. Patent No. 5,659,120 were commonly owned or were subject to an obligation of assignment to the same party, Asgrow Seed Company, at the time the invention of U.S. Patent No. 5,659,120 was made. A copy of the assignment recordation information for U.S. Patent No. 5,659,120 is attached as **Exhibit B**.
10. I hereby declare that all statements made of my own knowledge are true and all statements made on information are believed to be true and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issued thereon.

Date: 10-9-07



Alan K. Walker



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Assignments on the Web > Patent Query

Patent Assignment Abstract of Title

**NOTE: Results display only for issued patents and published applications.
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Total Assignments: 2

Patent #: 6376754

Issue Dt: 04/23/2002

Application #: 08813788

Filing Dt: 03/07/1997

Inventors: JOHN A. SCHILLINGER, ALAN K. WALKER, JOSEPH R. BYRUM

Title: PLANTS HAVING RESISTANCE TO MULTIPLE HERBICIDES AND ITS USE

Assignment: 1

Reel/Frame: 008557/0903

Recorded: 06/10/1997

Pages: 2

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignors: SCHILLINGER, JOHN A.

Exec Dt: 05/20/1997

WALKER, ALAN K.

Exec Dt: 05/27/1997

BYRUM, JOSEPH R.

Exec Dt: 05/29/1997

Assignee: ASGROW SEED COMPANY

2605 E. KILGORE ROAD

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Correspondent: ROTHWELL, FIGG, ERNST & KURZ, PC

ROBERT J. JONDLE

555 13TH STREET NW

SUITE 701 EAST TOWER

WASHINGTON, DC 20004

Assignment: 2

Reel/Frame: 012350/0224

Recorded: 06/13/2001

Pages: 54

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: PHARMACIA CORPORATION, FORMERLY KNOWN AS MONSANTO COMPANY

Exec Dt: 06/11/2001

Assignee: MONSANTO TECHNOLOGY LLC

800 NORTH LINDBERGH BOULEVARD

ST. LOUIS, MISSOURI 63167

Correspondent: MONSANTO COMPANY

GAIL WUELLNER - MAIL ZONE E2NA

800 NORTH LINDBERGH BLVD.

ST. LOUIS, MO 63167

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Total Assignments: 1

Patent #: 5710368

Issue Dt: 01/20/1998

Application #: 08644498

Filing Dt: 05/10/1996

Inventor: WILLIAM K. RHODES

Title: SOYBEAN CULTIVAR 924181339

Assignment: 1

Reel/Frame: 007997/0135

Recorded: 05/10/1996

Pages: 2

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: RHODES, WILLIAM K.

Exec Dt: 05/07/1996

Assignee: ASGROW SEED COMPANY

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KALAMAZOO, MICHIGAN 49002

Correspondent: ROTHWELL, FIGG, ERNST & KRUIZ, P.C.

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WASHINGTON, D.C. 20004

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For pending or abandoned applications please consult USPTO staff.**

Total Assignments: 1

Patent #: 5659120

Issue Dt: 08/19/1997

Application #: 08650306

Filing Dt: 05/20/1996

Inventor: CRAIG K. MOOTS

Title: SOYBEAN CULTIVAR 928933959

Assignment: 1

Reel/Frame: 007997/0588

Recorded: 05/20/1996

Pages: 2

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: MOOTS, CRAIG K.

Exec Dt: 05/10/1996

Assignee: ASGROW SEED COMPANY

2605 E. KILGORE RD.

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Correspondent: ROTHWELL, FIGG, ERNST & KURZ, PC

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